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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,343	04/25/2005	Helen Gillian Anantharaman	112701-596	7148
29157 K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690	7590 04/07/2009		EXAMINER STULIL VERA	
			ART UNIT 1794	PAPER NUMBER
			NOTIFICATION DATE 04/07/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

### Office Action Summary

**Application No.**

10/527,343

**Applicant(s)**

ANANTHARAMAN ET AL.

**Examiner**

VERA STULII

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/86)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

### DETAILED ACTION

Applicants' attorney pointed out that the Office action mailed 08/21/2008 did not take into account a preliminary amendment filed 09/09/2005. Upon review by the Examiner, it was found that the preliminary amendment was not given a separate entry in the electronic table of contents and was thus obscured from view in the electronic file. Since the Office action was therefore not directed to the currently pending claims, the Office action mailed 8/21/08 is being vacated and a new Office action directed to the amended claims is set forth below and a new statutory period for response will be reset to begin with the mailing date of this Office action.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Stillman (US 6,248,390).** Hoeks (WO 97/04035) is cited as evidence as discussed below.

In regard to claim 1, Stillman discloses a shelf-stable, clear and neutral pH water composition comprising demineralized water and soluble fibres that comprise oligosaccharides with a chain length of about 2 to 20. In particular, Stillman discloses "A shelf stable, ready to use, "essentially tasteless" and odorless water-like fluid for humans/animals comprised of safe water and a significant quantity of one or more

water-soluble dietary fibers" (Abstract). Stillman further discloses that either natural water (e.g. mineral water) or purified (demineralized) water can be used, and that the base water should be low in dissolved salts (Col. 5 lines 10-15). Regarding claim 2 and "oligosaccharides with a chain length of about 2 to 20" recitation in claim 1, Stillman discloses purified inulins (fructo-oligosaccharides), low molecular weight grades of inulin and Frutafit® (Col. 5 lines 20-21; Col. 6 lines 7-10; Col. 12 line 45). As evidenced by Hoeks (WO 97/04035), Frutafit® is a "designation of commercially available inulin from chicory having an average DP of approximately 10 monosaccharide units" (page 5 Example 4).

In regard to claim 3, Stillman discloses the amount of fibres is 0.1-10% (by weight).

In regard to claims 4 and 5, since Stillman discloses that "[t]he slight sweetness of the inulin makes the water especially palatable" (Col. 12 lines 46-48) and the fact that "some individuals can detect a slightly different "mouth feel" because of the slight viscosity increase resulting from the soluble fibers" (Col. 11 lines 51-53). Stillman teaches modifying the taste characteristics of a neutral PH of substantially demineralized water by adding soluble fibres comprising oligosaccharides with a chain length of about 2 to 20 units.

In regard to claim 8, Stillman discloses multiple health benefits of fiber-water. Stillman discloses that "[t]he soluble fiber(s) used are proven to moderate the postprandial rise in blood glucose (diabetes), address weight loss (obesity), lower serum cholesterol level (cardiovascular/heart), and address constipation and bowel

regularity (colon cancer)" (Abstract). Since Stillman forms a composition for the human consumption as recited, the method of Stillman would inherently achieve the results recited.

Regarding modifying at least one of bitterness, softness, astringency, smoothness and metallic-ness recitations in claim 5, it is noted that although the reference does not specifically disclose every possible quantification or characteristic of its product, such as modified bitterness, softness, astringency, smoothness and metallic-ness and various health beneficial effects, these characteristics would have been expected to be inherent as claimed absent any clear and convincing evidence and/or arguments to the contrary. The reference discloses the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of ordinary skill in the art would recognize that the modified bitterness, softness, astringency, smoothness and metallic-ness, among many other characteristics of the product obtained by the referenced method, would have been an inherent result of the process disclosed therein. The Patent Office does not possess the facilities to make and test the referenced method and product obtained by such method, and as a reasonable reading of the teachings of the reference has been applied to establish the case of anticipation, the burden thus shifts to applicant to demonstrate otherwise.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 6-7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stillman (US 6,248,390).**

Stillman is taken as cited above. In regard to claims 6-7 and 9-10, Stillman further discloses the use of maltodextrins prepared by controlled hydrolysis of corn or potato starches (Col. 11 lines 37-39). In regard to the "acidic pH" recitation in claim 6, Stillman discloses that a water based product can provide additional flavor such as lime or lemon flavor which can enhance palatability of the product (Col. 11 lines 64-67), and

the fact that the fiber water may be reconstituted with frozen lemonade to produce lemonade (that was well known in the art to have an acidic pH) (Abstract). In regard to claim 6 and 9, Stillman is silent as to the digestion resistance of the maltodextrins employed. In any case, one of ordinary skill in the art would have been motivated to Modify Stillman, if at all necessary, and to use digestion resistant maltodextrin, in order to increase dietary value of the final product. One of ordinary skill in the art would have been motivated to do so, since use of digestion resistant fibres in the beverage was well established in the art. In regard to claims 6 and 10, Stillman is silent as to the molecular weight of maltodextrin. However, Stillman discloses water-like viscosity of the final product. One of ordinary skill in the art would have been motivated to choose maltodextrin with a molecular weight that produces a desired viscosity in the final product. Therefore, the molecular weight of the maltodextrin is seen to have been an obvious result effective variable.

In regard to claim 7, Stillman discloses fruit extracts (lemonade/orange juice frozen concentrates) (Abstract).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794

/Vera Stulii/  
Examiner, Art Unit 1794